

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

GERALD EWING,)	
)	
Plaintiff,)	
)	
v.)	
)	
DAVID OHRE, et al.,)	
)	
Defendants.)	Civil Action No. 1:12-CV-060-C

ORDER

On this date, the Court considered:

- (1) the Motion to Dismiss as Moot filed by Defendants, David Ohre, Larry Sanders, and Exceptional Brands, LLC, d/b/a Buffalo Wild Wings ("Defendants"), on October 2, 2012;
- (2) the Response filed by Plaintiff, Gerald Ewing ("Plaintiff"), on October 31, 2012;
- (3) the Parties' Joint Notice Re Agreement Respecting Future Use, filed November 14, 2012;
- (4) Plaintiff's Motion for Summary Judgment, filed September 29, 2012; and
- (5) Defendants' Response, filed October 11, 2012.

Plaintiff filed this case seeking actual or statutory damages, injunctive relief, and attorney's fees for Defendants' alleged infringing display of one of Plaintiff's photographed images ("the image"). The image was displayed as part of a mural on a restaurant wall. In its Order and Judgment of September 6, 2012, the Court held that Plaintiff's rights to actual damages, statutory damages, and attorney's fees were foreclosed as a matter of law. Therefore,

the only remaining form of relief potentially available to Plaintiff was injunctive relief prohibiting further unauthorized display of the image.

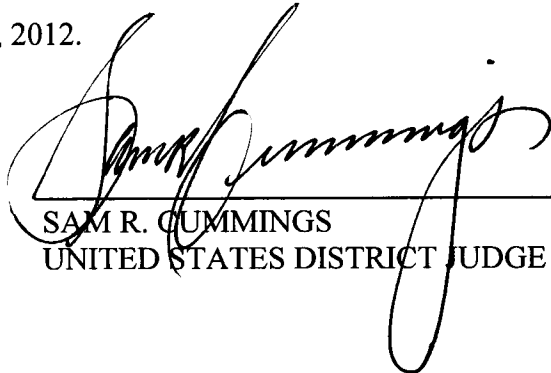
On September 30, 2012, Defendants voluntarily spray painted over the image. It is undisputed that this action completely covered and effectively disposed of Defendants' public display of the image. Moreover, the parties filed with the Court a joint notice indicating that Plaintiff and Defendants have reached an agreement that Defendants will not display the image in the future. As such, Plaintiff's request for injunctive relief is moot.

Because Plaintiff's right to any remedy, including injunctive relief, is foreclosed, this case is effectively moot. Therefore, Defendants' Motion to Dismiss as Moot is **GRANTED**, and the above-styled and -numbered cause is **DISMISSED** with prejudice.

Additionally, Plaintiff's Motion for Summary Judgment is **DENIED** as moot.

SO ORDERED.

Dated this 16th day of November, 2012.



SAM R. CUMMINGS
UNITED STATES DISTRICT JUDGE